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No. 346

In the Supreme Court of the United States

OCTOBER TERM, 1946

**SILESIAN AMERICAN CORPORATION, DEBTOR, AND
SILESIAN HOLDING COMPANY, PETITIONERS**

v.

JAMES E. MARKHAM, ALIEN PROPERTY CUSTODIAN

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT**

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

• The opinion of the district court (R. 49) is not reported. The opinion of the Circuit Court of Appeals (R. 63-69) has not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals (R. 69) was entered on July 3, 1946. The petition for writ of certiorari was filed August 2, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATUTES AND EXECUTIVE ORDERS INVOLVED

The pertinent provisions of the Trading with the Enemy Act, as amended, and of Executive Orders issued thereunder, are set forth in the Appendix, *infra*, pp. 17-25.

QUESTIONS PRESENTED

1. Whether the Trading with the Enemy Act, as amended by the First War Powers Act, 1941, and as implemented by executive orders issued thereunder, involves an unconstitutional delegation of legislative powers.

2. Whether a constitutionally adequate remedy is available to a non-enemy foreign national whose property has been vested pursuant to the Trading with the Enemy Act, as amended by the First War Powers Act, 1941.

3. Whether, under Section 8 (a) of the Trading with the Enemy Act, as amended by the First War Powers Act, 1941, the issuer of stock certificates representing shares which the Alien Property Custodian has vested, may refuse to cancel the outstanding certificates and to issue new ones to the Custodian on the ground that the shares are held in pledge by persons who are non-enemy foreign nationals.

STATEMENT

Petitioner Silesian American Corporation is the debtor in proceedings for corporate reorganization brought in the District Court on July 29,

1941, pursuant to Chapter X of the Bankruptcy Act, 11 U. S. C. 501 *et seq.* (R. 1, 34). Petitioner Silesian American Holding Company is the holder of the majority of the outstanding shares of the debtor's common and preferred stock (R. 5).

On November 17, 1942, the Alien Property Custodian, the respondent, issued Vesting Order No. 370, 8 F. R. 33 (R. 14-15). By that Order, he vested in himself 50,000 shares (41.67%) of the debtor's preferred stock and 98,000 shares (49%) of its common stock, upon findings that the shares were held by a Swiss corporation for the benefit of a German corporation and that it was necessary in the national interest to vest them. A copy of this Order was served on the debtor (R. 16), and by subsequent letter the debtor was directed to cancel on its books the outstanding certificates representing the vested shares and to issue new certificates to the Custodian (R. 16-17). The debtor thereupon filed a petition in the bankruptcy proceeding for instructions whether to comply with this direction (R. 5-13). From the debtor's petition for instructions, and from affidavits filed in the District Court, it appeared that certain Swiss banks asserted that the shares vested by the Custodian had been pledged to them as security for loans (R. 7, 49).¹

¹ The assertion was also made that the Swiss banks were the full and unqualified owners of the shares (R. 18-19, 26). This assertion appears to have been abandoned in all of the appellate proceedings. (See Pet. 5, 16, 18.)

These banks announced their intention of holding the debtor and its trustee liable for any action which either might take to their prejudice (R. 27-8). The District Court, after hearing argument on the return to a show cause order issued on this petition, declined to consider whether the Swiss banks owned any interest in the vested shares (R. 49), and entered an order directing the debtor to cancel the outstanding certificates and to issue new certificates as directed by the Custodian (R. 50-51). Although the Swiss banks were represented by counsel at the hearing in the District Court (R. 50), they did not appeal from its decision (R. 64). The present petitioners appealed, and the Circuit Court of Appeals affirmed the District Court's order (R. 69).

ARGUMENT

1. As it existed in World War I, the Trading with the Enemy Act, 40 Stat. 411, 50 U. S. C. App. 1-31, authorized the seizure of property of enemies and allies of enemies. Section 9 (a) of the Act authorized "any person not an enemy or ally of enemy" to sue for the recovery from the Alien Property Custodian of any property to which he could "establish" that he was "entitled." By the First War Powers Act, 1941, c. 593, 55 Stat. 839, Congress amended Section 5 (b) of the Act so as to authorize the vesting of "any property or interest of *any foreign country* or national thereof." Every court that has had

occasion to consider the question has held that the effect of this amendment was to preclude a foreign national, as defined pursuant to Section 5 (b), from recovering any property or interest in a suit under Section 9 (a). *Draeger Shipping Co. v. Crowley*, 49 F. Supp. 215, 219 (S. D. N. Y.), 55 F. Supp. 906, 914 (S. D. N. Y.); *Uebersee Finanz-Korporation v. Markham*, Dist. Ct. of the U. S. for the D. C., Sept. 21, 1945, now pending on appeal before the U. S. Court of Appeals for the District of Columbia;² *Iki v. Crowley*, W. D. Wash., May 10, 1944, and on rehearing, July 10, 1944;³ *Hayden v. Crowley*, W. D. Wash., May 10, 1944, and on rehearing, July 10, 1944.⁴ See *Duisberg v. Crowley*, 54 F. Supp. 365 (D. N. J.). As the court below indicated

² In this case the United States moved to dismiss a complaint under Section 9 (a) for the return of property, on the ground that it appeared on the face of the complaint that the plaintiff was a national of Switzerland. The district court granted the motion without opinion.

³ In this case Black, D. J., handed down the following opinion:

"After consideration of the very comprehensive briefs in behalf of each party which supplement the oral arguments which were submitted, and regardless of whether or not the complaint is or is not otherwise sufficient I am satisfied that it is essential that the plaintiff affirmatively allege that he is not a national of a foreign or enemy country. Such allegation is not now present.

"For such reason in any event the defendants' motion to dismiss should be granted."

⁴ This case was disposed of by an opinion identical with that in *Iki v. Crowley*, *supra*, note 3.

(R. 67), while a foreign national has capacity to sue under Section 9 (a), he cannot "establish" that he is "entitled" (as the terms of the section require) to the property sued for if that property was vested by an order which Congress has authorized by Section 5 (b).

The court below rightly held, however, that it was unnecessary to decide this issue.³ For the petitioners assert no interest in the vested shares; their sole interest lies in a supposed possibility that the debtor would be liable to the Swiss banks should it comply with the Custodian's direction to cancel and issue certificates. Against any such possibility the petitioners are fully protected by the terms of Sections 5 (b) (2) and 7 (e) of the Act. Section 5 (b) (2), *infra*, p. 18, provides that any transfer of property made to the United States or as otherwise directed pursuant to Section 5 (b) "shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same," and that "no person shall be held liable in any court for or in respect to anything done or omitted in good faith" in reliance on any instruction or direction issued under that section. The exculpatory provisions of Section 7 (e), *infra*, p. 20, are substantially similar.

³ The issue is squarely presented for decision in *Uebersee Finanz-Korporation v. Markham*, which was argued on May 28, 1946, before the U. S. Court of Appeals for the District of Columbia, and is presently awaiting decision.

It may be doubted whether the Swiss banks, who appeared in the District Court and elected not to appeal from its order, could under any circumstance hold the debtor liable for complying with that order. But it is evident that the debtor can be subjected to liability, if at all, only on the assumption that these provisions of Sections 5 (b) and 7 (c) are of no effect because of the asserted unconstitutionality of the statutory scheme of which they are a part. The petitioners assert that the Act is unconstitutional as to the Swiss banks on the ground that it fails to afford those banks a constitutionally adequate remedy for the taking of their property by the Vesting Order. The question whether a foreign national may sue for return under Section 9 (a) is thus presented in this suit only to the extent that it becomes relevant to the determination whether a foreign national has such a constitutionally adequate remedy. If, as the petitioners appear to contend, a foreign national must be allowed to recover in a suit under Section 9 (a), all constitutional requirements are satisfied and the petitioners have no standing to object to the order of the District Court. *Central Union Trust Co. v. Garvan*, 254 U. S. 554. If, on the other hand, as the Government contends; it be held that a foreign national may not recover under Section 9 (a), there is nevertheless available to the Swiss banks a fully adequate remedy by way of a suit for just compensation under the

Tucker Act, 28 U. S. C. 41 (20), 250. Under either construction of the Act, therefore, the petitioners are protected by the exculpatory provision of Sections 5 (b) and 7 (c) and they accordingly have no justiciable interest in the question of which is the proper construction.

The decision below that the remedy of just compensation is available to the Swiss banks presents no issue calling for further review. That decision was founded upon the well-established principle that a taking by the United States of property which is protected by the guarantee of the Fifth Amendment gives rise to an implied promise on the part of the United States to pay just compensation which can form the basis for a suit under the Tucker Act. *Yearsley v. Ross Construction Co.*, 309 U. S. 18, 21. If the property of the Swiss banks is entitled to that protection, there can be no doubt that a remedy of just compensation fully satisfies the constitutional requirement. As this Court indicated in *Becker Steel Co. v. Cummings*, 296 U. S. 74, 79, the summary seizure of property authorized by the Trading with the Enemy Act is clearly constitutional if there is provided a remedy "adequate to secure to the non-enemy owner either the return of his property or compensation for it."

The petitioners assert that they will be precluded from suing in the Court of Claims under the Tucker Act for two reasons. The first is

Section 153 of the Judicial Code, 28 U. S. C. 259, which provides that the jurisdiction of the Court of Claims, "shall not extend to any claim against the Government * * * growing out of or dependent on any treaty stipulation entered into with foreign nations * * *." They assert that the Swiss banks are entitled to protection for their property by reason of Article I of the Treaty of Friendship and Commerce of 1850 with Switzerland, 11 Stat. 587, and they suggest that because the claim of those banks might derive in part from the Treaty, this section would preclude suit in the Court of Claims. But it is apparent that the protection of constitutional rights depends not upon the Treaty but upon the Fifth Amendment, and hence any suit of the Swiss banks under the Tucker Act need in no sense be a claim growing out of or dependent upon the treaty provisions.

In the second place, the petitioners rely on the fourth paragraph of Section 7 (c), *infra*, pp. 19-20, which provides that the "sole relief and remedy of any person having any claim to any money or other property" transferred to the Custodian "shall be that provided by the terms of this Act."

This provision was enacted at a time when the power of seizure was limited to enemy and ally-of-enemy property, which could constitutionally be subjected to confiscation. *Stoehr v. Wallace*, 255 U. S. 239; *Cummings v. Deutsche Bank*, 300

U. S. 115. At that time the statutory remedy of return was thus available as to all property which was entitled to the protection of the Fifth Amendment. Section 7 (c) would appear to be clearly inapplicable to cases where, as a result of the expansion of the vesting power in 1941 to include all foreign property, the Act provides no express remedy for a seizure of constitutionally protected property. The claim of the Swiss banks in a suit under the Tucker Act would not be a "claim to money or other property" transferred to the Custodian; it would rest on the exactly contrary assumption that the property transferred had irrevocably passed beyond all power to recover it, and that the United States, because it had thus taken unqualified title, was bound by an implied promise to pay just compensation.

The decision of the Circuit Court of Appeals on this issue is correct and petitioners assert no conflict with any other decision of any court.* Moreover, while the question as such may be of

* The question as to the availability of a suit under the Tucker Act for just compensation for property vested by the Alien Property Custodian has not, except for the decision below, been adjudicated subsequent to the amendment of the Act by the First War Powers Act, 1941. Under the Act as it stood prior to that amendment, some decisions indicated that a suit for just compensation founded upon a seizure of property of the Custodian could not be maintained. *Pfueger v. United States*, 121 F. (2d) 732 (App. D. C.), certiorari denied, 314 U. S. 617; *Escherx. United States*, 68 C. Cls. 473, certiorari denied, 281 U. S. 752. In both cases the plaintiffs had already obtained relief under Sec. 9 (a); no question was presented, therefore, as to the right to sue for just compensation in cases where Sec. 9 (a) was inapplicable.

importance it is only obliquely involved in the present case;

2. Petitioners argue (Pet. 26-30) that they are relieved from the duty of complying with the Custodian's direction to cancel and issue certificates because Section 5 (b) of the Trading with the Enemy Act involves in its operation an unconstitutional delegation of legislative power in that no adequate standard is afforded to guide the exercise of the vesting power. This contention also presents no issue calling for further review. Section 5 (b) states explicitly both the powers conferred and the subject matter—property of a foreign country or a national thereof⁷—on which they are to operate. In dealing with the field of foreign relations in time of war,⁸

⁷ While the Act does not define these terms, they are defined in detail by the applicable executive orders. (See Section 5 of Executive Order No. 8389, April 10, 1940, 5 F. R. 1400, as amended by Executive Order No. 8785, June 14, 1941, 6 F. R. 2897, *infra*, pp. 23-24, made applicable to the exercise by the Custodian of the vesting power by Section 10 of Executive Order No. 9193, July 6, 1942, 7 F. R. 5205, *infra*, pp. 24-25.) The definitions in their original form were expressly ratified by the Joint Resolution of May 7, 1940, 54 Stat. 179. The amended definitions presently in effect do not differ in essence from the original definitions and were in force when the First War Powers Act was passed. Moreover, the President's power to prescribe definitions is limited by the requirement of Section 5 (b) (3) that the definitions be "not inconsistent with the purposes of this subdivision."

⁸ Since Vesting Order No. 370 was issued during time of war, it is unnecessary here to consider problems which might

Congress was not required to state with rigid precision the occasion for the exercise of the powers conferred. Cf. *United States v. Curtiss-Wright Export Corp.*, 299 U. S. 304. Thus, the Trading with the Enemy Act as it existed during the First World War contained no statement of the occasion for the exercise of the power to seize enemy property, yet in the many cases in this Court sustaining its validity it was never suggested that it involved an improper delegation of legislative power. In any event, the Custodian's exercise of the vesting power is in practice circumscribed by the requirement of Executive Order No. 9193, July 6, 1942, 7 E. R. 5205, that its exercise be found "necessary in the national interest." Such a requirement affords, under the circumstances, a sufficient standard for the guidance of administrative discretion in the application of stated powers to a stated subject matter. Cf. *New York Central Securities Corp. v. United States*, 287 U. S. 12, 24-25.

The petitioners also suggest (Pet. 9-10) that the definition of "foreign national" contained in Executive Order No. 9193 renders the statutory scheme invalid because it confers on the Custodian the authority to declare a person to be a "national of a designated enemy country" upon a finding arise from the exercise of the vesting power in a time of emergency short of war.

* Under Executive Order No. 9193 a distinction is drawn between those foreign nationals as defined in Executive Order No. 8389, as amended (see note 7, *supra*), who are "nationals of a designated enemy country" and those who are

that the national interest requires him so to be treated. The suggestion misconceives the effect of Section 10 of Executive Order No. 9193. Under that section persons who are nationals of a foreign country which is a designated enemy country, but who are not physically within that enemy country, are to be treated as "nationals of a designated enemy country" only upon a finding by the Custodian that the national interest requires that they be so treated. In short the section creates an exception from the normally applicable definition, based on physical absence from the enemy country, and allows the Custodian to remove that exception upon a finding that the national interest requires that it be removed. The Custodian's power is thus circumscribed by the basic definition of "national," and there is no prohibited uncertainty in conferring upon him discretion to remove an exception from that definition.

The Circuit Court of Appeals' holding on the question of delegation is thus correct. There is no conflict of authorities; indeed the decision is in accord with a series of decisions involving Section 5 (b). See as to Section 5 (b) as amended by the Act of March 9, 1933, 48 Stat. 1, *Campbell v. Chase Nat. Bank*, 5 F. Supp. 156, 172-4 (S. D. N. Y.), affirmed, 71 F. (2d) 669 (C. C. A. 2), certiorari denied, 293 U. S. 592; as further

nationals only of a foreign country. Property of the former may generally be vested; property of the latter may be vested only if it falls within certain specified categories. Vesting Order No. 370 vested the shares here in suit as property of a "national of a designated enemy country."

amended by the Joint Resolution of May 7, 1940 (54 Stat. 179), *United States v. Von Clemm*, 136 F. (2d) 968 (C. C. A. 2), certiorari denied, 320 U. S. 769; and as further amended by the First War Powers Act, 1941, *Alexewicz v. General Aniline and Film Corp.*, 181 Misc. 181, 193, 43 N. Y. S. (2d) 713, 726.

3. Petitioners assert that Section 8 (a) of the Act, *infra*, pp. 20-21, conferred upon them a right to retain possession of the certificates. That section in terms permits certain types of pledgees of enemy interests to retain the pledged property and dispose of it upon default. The Circuit Court of Appeals correctly held that as a result of the 1941 amendments a foreign national cannot by reliance on Section 8 (a) delay the Custodian's reduction to possession of vested property. This Court, in *Markham v. Cabell*, 326 U. S. 404, declared that Section 5 (b) and the other provisions of the Act must not be read in isolation but "were designed to function as parts of an integrated whole" (p. 411), so that rights conferred by other sections as they existed prior to the 1941 amendments survive if they do not "collide[s] with the policy of Section 5 (b)" (p. 413). Here there is such a collision if Section 8 (a) is construed to exempt from seizure pledge interests held by foreign nationals, although Section 5 (b) has subjected all property of foreign nationals to seizure.¹⁰

¹⁰ If the Custodian had desired to leave the pledge undisturbed, he could have vested the property subject to the

But even if the court below were wrong, the petitioners still could not prevail on this issue. The present record contains no allegation that the asserted pledges of the Swiss banks "may be disposed of on notice or presentation or demand" as Section 8 (a) requires as a condition to its applicability. And in any event these petitioners can claim no rights under Section 8 (a) and can show no injury arising out of the construction which has been given to that section by the Circuit Court of Appeals. Section 8 (a) confers upon a pledgee the right to continue to hold the pledged property; it confers no right on persons who, like the petitioners, assert no interest of any kind in the property. As the court below pointed out (R. 64), the debtor is not here as the representative of the Swiss pledgees of its shares. Its sole interest is in avoiding liability to the Swiss banks. Once it is accepted that the statutory scheme is not unconstitutional as to those banks, the petitioners are fully protected from any liability to them by the provisions of Sections

pledge or vested merely all interest of the pledgor in the property. The Custodian has frequently issued vesting orders which vested "all right, title, and interest" of a designated person in specified property, rather than vesting the property itself. See *Markham v. Allen*, 326 U. S. 490; *Kahn v. Garvan*, 263 Fed. 909 (S. D. N. Y.). His determination here to vest the property itself may be taken as a conclusion that the national interest required the vesting and reduction to possession of all interests in the property—whether of pledge or lien or otherwise—which were subject to the vesting power.

5 (b) (2) and 7 (e). The petitioners cannot be subjected to liability by reason of a decision adverse to the interests of those banks on a question of the availability of a special statutory privilege which those banks have not claimed in these appellate proceedings.

CONCLUSION

The decision below is correct on all points and there is no conflict of authorities. Moreover, the petitioners' interest in the subject matter of the litigation is highly remote; they are mere stakeholders who have standing, if at all, only because of a feared liability to others who have elected not to appeal in this proceeding. The petition for a writ of certiorari therefore should be denied.

Respectfully submitted.

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APPENDIX

Trading with the Enemy Act, c. 106, 40 Stat. 411, as amended (50 U. S. C. App. 1-31):

SEC. 5 (as amended by the First War Powers Act of 1941 c. 593, Sec. 301, 55 Stat. 839, 50 U. S. C. App., Supp. V, 5 (b):

(b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent, or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the

terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; * * * and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof, including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and

concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas: *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision.

SECTION 7.

(c) (as amended by the Deficiency Appropriation Act of Nov. 4, 1918, c. 201, Sec. 1, 40 Stat. 1020) If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this act.

The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter con-

veyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States.

* * * * *

(e) No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. * * *

SEC. 8. (a) That any person not an enemy or ally of enemy holding a lawful mortgage, pledge, or lien, or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien, or right, may be disposed of on notice or presentation or demand, and any person not an enemy or ally of enemy who is a party to any lawful contract with an enemy or ally of enemy, the terms of which provide for a termination thereof upon notice or for acceleration of maturity on presentation or demand, may continue to hold said property, and, after default, may dispose of the property

in accordance with law or may terminate or mature such contract by notice or presentation or demand served or made on the alien property custodian in accordance with the law and the terms of such instrument or contract and under such rules and regulations as the President shall prescribe; and such notice and such presentation and demand shall have, in all respects, the same force and effect as if duly served or made upon the enemy or ally of enemy personally: *Provided*, That no such rule or regulation shall require that notice or presentation or demand shall be served or made in any case in which, by law or by the terms of said instrument or contract, no notice, presentation, or demand was, prior to the passage of this Act, required; and that in case where, by law or by the terms of such instrument or contract, notice is required, no longer period of notice shall be required: *Provided further*, That if, on any such disposition of property, a surplus shall remain after the satisfaction of the mortgage, pledge, lien, or other right in the nature of security, notice of that fact shall be given to the President pursuant to such rules and regulations as he may prescribe, and such surplus shall be held subject to his further order.

SEC. 9. (a) (as amended by the Act of March 4, 1923, c. 285, 42 Stat. 1511) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property

or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant

of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

Executive Order No. 8389, April 10, 1940,
5 F. R. 1400, as amended by Executive Order
No. 8785, June 14, 1941, 6 F. R. 2897:

SECTION 5. * * *

E. The term "national" shall include,

(i) Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order.

(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, such foreign coun-

try and/or one or more nationals thereof as herein defined,

(iii) Any person to the extent that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any national of such foreign country, and

(iv) Any other person who there is reasonable cause to believe is a "national" as herein defined.

Executive Order No. 9193, July 6, 1942, 7 F. R. 5205:

* * * * *

Executive Order No. 9095 of March 11, 1942, is amended to read as follows:

1. There is hereby established in the Office for Emergency Management of the Executive Office of the President the Office of Alien Property Custodian, at the head of which shall be an Alien Property Custodian appointed by the President.

* * * * *

2. The Alien Property Custodian is authorized and empowered to take such action as he deems necessary in the national interest, including, but not limited to, the power to direct, manage, supervise, control or vest, with respect to:

(a) any business enterprise within the United States which is a national of a designated enemy country and any property of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of or owing to or which is evidence of ownership or control of any such business enterprise, and any interest of any nature whatsoever in such business enterprise held by an enemy country or national thereof;

* * * * *

10. For the purpose of this Executive Order:

(a) The term "designated enemy country" shall mean any foreign country against which the United States has declared the existence of a state of war (Germany, Italy, Japan, Bulgaria, Hungary and Rumania) and any other country with which the United States is at war in the future. The term "national" shall have the meaning prescribed in section 5 of Executive Order No. 8389, as amended, *provided, however*, that persons not within designated enemy countries (even though they may be within enemy-occupied countries or areas) shall not be deemed to be nationals of a designated enemy country unless the Alien Property Custodian determines: (i) that such person is controlled by or acting for or on behalf of (including cloaks for) a designated enemy country or a person within such country; or (ii) that such person is a citizen or subject of a designated enemy country and within an enemy-occupied country or area; or (iii) that the national interest of the United States requires that such person be treated as a national of a designated enemy country. For the purpose of this Executive Order any determination by the Alien Property Custodian that any property or interest of any foreign country or national thereof is the property or interest of a designated enemy country or national thereof shall be final and conclusive as to the power of the Alien Property Custodian to exercise any of the power or authority conferred upon me by section 5 (b) of the Trading with the enemy Act, as amended.